ANNUAL REPORT
Per SCR 111 of 2007

BY

LOUISIANA PATIENT'S COMPENSATION FUND

October 1, 2008

A BRIEF HISTORY
OF THE

LOUISIANA PATIENT'S COMPENSATION FUND

In the early 1970's, a problem of crisis proportions arose in medical malpractice liability in the U.S. Because of an explosion in both loss frequency and severity, insurance carriers found themselves forced to raise malpractice premiums by massive percentages. Ultimately, a number of carriers retired from writing malpractice liability altogether. The effect on physicians and hospitals was chilling. Some found themselves unable to pay indicated premiums and some found themselves unable to obtain coverage at any price. Certain areas of the country were harder hit than others and, in those areas, physicians started leaving their practices or practicing without coverage. Louisiana was one of the states facing this situation.

It was in this climate that the 1975 legislative session opened and **Act 817** was passed which created the Louisiana Patient's Compensation Fund to cover the private health care providers. The purpose of this legislation was twofold. First, to ensure that a stable and affordable market existed for malpractice insurance (and thereby keeping private practitioners in the state); and second, to create a viable fund for compensating claimants while providing a statutory cap on total liability. The $500,000 cap was considered an equitable tradeoff between compensating the most injured claimants adequately and maintaining the financial stability of the Patient's Compensation Fund. Private health care providers who choose to enroll in the PCF remain responsible for the first $100,000 of each claim, and are required to provide the Patient's Compensation Fund with evidence of insurance coverage. R.S. 40:1299.41 *et seq* detailed the specifics of the operation of the Patient's Compensation Fund, and also provided for the Medical Review Panel process, in which each claim is reviewed by three licensed Louisiana health care providers, one (1) appointed by the plaintiff, one (1) by the defendant and the third by mutual agreement of the first two appointees. The attorney chairman is selected by mutual agreement of the plaintiff and defendant. After reviewing the case and rendering an opinion, the health care providers that were members of the panel may be deposed by both the plaintiff and defendant. The medical review panel process is the first step in pursuing a claim against a health care provider.

Over the passage of time, additional elements were added to the Patient's Compensation Fund. The requirement for an underlying insurance policy was amended to allow the private providers to supply the Patient's Compensation Fund with an acceptable security valued at $125,000 and self-insure their first $100,000 exposure. This provision is increasingly attractive. Roughly 20% of all active enrollees are currently self-insured for primary losses. Next, in 1984, the statute was amended to allow for the payment of all related medical expenses. This change allowed those patients with more severe injuries to have medical expenses paid on an ongoing basis. This was an important concession as these expenses have no statutory limit on the total payment. These expenses are paid in addition to the general damages settlement or judgment payment.

In the 1990 legislative session, a major change was made in the format and operation of the Patient's Compensation Fund due to the increasing concern by the private health care providers

for the financial integrity of the Patient's Compensation Fund. The statute was revised to move the operation and maintenance of the Patient's Compensation Fund from the Department of Insurance and the Attorney General's office by creating an Oversight Board. This was intended to give the Patient's Compensation Fund more autonomy of operation and also to allow for the creation of a trained staff to reduce the time and expense associated with claims processing. This change was also necessary to make the Patient's Compensation Fund financially stable so as to ensure its continuation and availability to the private health care providers and those injured as a result of medical malpractice. The effectiveness of the Patient's Compensation Fund's employees can be seen in comparison to the expense ratios of commercial liability insurers. On average, commercial carriers have an expense ratio of about 20% (i.e., every dollar received loses 20 cents for expenses). In contrast, the Patient's Compensation Fund averages a 4-5% expense ratio.

The creation of the Oversight Board gave providers greater input, and also greater responsibility, in the operation of the Patient's Compensation Fund. The Oversight Board is drawn from the provider groups based on their proportional representation in the Patient's Compensation Fund as a whole. The members of the Oversight Board are appointed by the Governor from nominations by the various medical professional associations. In addition to physician and hospital members, the Oversight Board includes a representative from the miscellaneous classes, and also an insurance industry executive (from a carrier not writing malpractice insurance).

Today, the Patient's Compensation Fund insures over 15,000 private health care providers in Louisiana, including physicians, hospitals, clinics, dentists, ambulance services, optometrists, nurses, chiropractors, nursing homes, physical therapists, and a wide variety of others. Funds paid in by the members are approximately $140 million annually, and claim payments of $100 million have been made for the last two fiscal years, with the same amount expected in the current fiscal year. While the legality of the cap has come into question a number of times, the Louisiana Supreme Court has, thus far, ruled it to be constitutional.

The purpose for creating the Patient's Compensation Fund was to offer a stable, affordable market for medical malpractice liability insurance and also make available a reliable and secure source of compensation for injured patients. The providers have willingly accepted large premium increases over the past years to ensure the fiscal integrity of the Patient's Compensation Fund to financially meet its obligations.

ECONOMIC VIABILITY OF THE FUND

Act 817 of the 1975 Legislature created the Patient's Compensation Fund (PCF). The PCF has always labored to attain the position where it functions in a manner that combines quality claims administration with stable surcharge rates.

If the Patient's Compensation Fund (PCF) were compared to a traditional insurance company, then one might question the fiscal soundness of the entity. However, the Patient's Compensation Fund is a legislatively created entity designed to make medical malpractice insurance available to private health care providers at a reasonable price and to compensate those unintentionally injured as a result of what is determined to be medical malpractice. Since its inception in 1975, the PCF has consistently met all its obligations by paying all settlements and judgments in full. In addition, the financial stability of the PCF has significantly improved since 1990 when the Oversight Board was created by the state legislature.

The PCF's fiscal soundness is subject, in part, to surcharge collections, which are the fees charged to the private health care providers that choose to enroll in the PCF. The PCF is not mandatory. An annual actuarial study is done to determine the need for any rate increase. The recommendations of the actuary are discussed in an open board meeting by the members of the Oversight Board. The public is allowed and encouraged to participate in the discussions. At the meeting, a determination is made as to whether a rate increase is needed and the amount recommended is justified. Requests for rate increases must be presented to and approved by the Louisiana Department of Insurance. There have been years in the past in which the Louisiana Insurance Rating Commission has denied proposed rate increases by the Oversight Board. There have been 16 approved rate increases since January 1989, resulting in rates actually being increased 1029% for physicians and 977% for hospitals from 1985 to 2007. The continued participation by private health care providers in the PCF, despite huge rate increases, evidences the private heath care providers' commitment to the program and the Oversight Board's determination to maintain a sound and reliable fund for the benefit of those injured parties that seek compensation from the PCF, the private health care providers that participate in the PCF, as well as citizens of the state.

In 1990, when the Oversight Board began managing the PCF, the Medical Malpractice Act mandated that the PCF maintain funds so at to provide a surplus of 50% of reserves, expenses and surcharge premiums. (A 100% surplus would indicate the PCF has the funds needed to pay all pending claims and all claims that have occurred but have not yet been filed with the PCF). For the Oversight Board to instantly meet this statutory requirement would have required an enormous rate increase (nearly 200%) based on an actuary study in 1991. This would have caused a great financial hardship on the private health care providers across the state, as well as the health insurance companies and patients that would have had to absorb some of the increase. Further, it was highly unlikely that such a large rate increase would have been approved by the Oversight Board or Department of Insurance. From 1975 through 1990, the Patient's Compensation Fund essentially was paying out what was collected with very little, if any, in surplus funds remaining each year. Basically, surcharges collected in one year were being used to pay prior years' claims. In order to overcome 15 years (1975-1990) of inadequate surcharge

collections, private health care providers have been faced with annual, and in some instances, substantial rate increases. Despite this attempt to become sufficiently funded, each year for 13 years, the Legislative Auditor issued a finding against the PCF for failing to maintain the statutory required surplus. By 1997, and after the Oversight Board began administering the PCF, the PCF was maintaining only a 9% surplus, far below the mandated minimum of 50%. This meant there were funds available to pay only 9% of the claims pending and those claims that were incurred but not reported yet (as proved by the annual actuary report of PCF liabilities). As of July 2002, the surplus had increased to 23%, still far below the statutory minimum. In 2004, the Medical Malpractice Act was legislatively changed to mandate that at least a 30% surplus be maintained. In 2005, based on the actuary report and Treasurer's report of the funds available, the PCF surplus exceeded the 30% minimum and reached 36%.

The Oversight Board continues to strive to improve the financial status and stability of the PCF. Although the PCF now exceeds the mandated minimum, it is still considered by many to be "under funded". . In the most recent annual actuarial study, prepared for the year ending December 31, 2007, the PCF had estimated exposures totaling $915,000,000 and had funds on deposit and investments totaling approximately $481,000,000. Both the exposure and assets are the highest in the history of the PCF; however, the gap is still astounding. By the statutory calculation, the PCF would be in compliance with the Act by being considered 45% funded. It is and has always been the vision of the PCF Oversight Board to progressively close the gap between outstanding liabilities and current assets, without continuing to rely exclusively on annual rate increases. The ultimate goal is to be fully funded. This is important to the health care providers in Louisiana who need to have insurance coverage with stable and reasonable surcharge rates that are sufficient to fairly compensate those persons injured as a result of medical malpractice.

The PCF Oversight Board plans to continue to take the necessary steps in meeting all its obligations to fairly compensate injured parties, while at the same time attempting to keep surcharge rates at reasonable levels for private health care providers so that they will continue to practice in Louisiana and serve its citizens. Further, the financial stability of the PCF serves to make Louisiana more attractive to medical malpractice insurers, thereby drawing more companies to Louisiana to offer medical malpractice coverage. Increased competition among insurance companies should lead to more affordable rates for Louisiana health care providers. This in turn creates a positive atmosphere toward encouraging health care providers to continue to practice in this state and in attracting new providers to Louisiana. An increased quantity of health care providers being available to the citizens of Louisiana should result in improved healthcare.

Louisiana Patient's Compensation Fund

For more information please go to
www.lapcf.la.gov

The PCF web site will contain the report to the legislature as mandated by SCR 111 and more specifics regarding the rate increase for January 2008

For more information, you can also contact:

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Louisiana Patient's Compensation Fund
Annual Report per SCR 611 of the 2006 Regular Session
October 1, 2008

This public document was published at a total cost of $ 800.00. 200 copies of this public document were published in this first printing at a cost of $800.00. The total cost of all printings of this document, including reprints is $800.00. This document was published by Louisiana Patient's Compensation Fund to provide the annual report in accordance with SCR 611 of the 2007 Regular Session under authority of La. R.S. 43:31. This material was printed in accordance with the standards for printing by state agencies established pursuant to R.S. 43:31.